

APR 18 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ROBERTO ESTRADA-LERMA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70523

Agency No. A78-678-923

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2006^{**}

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Roberto Estrada-Lerma, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' summary affirmance without opinion of an

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's denial of his application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition for review.

Estrada-Lerma contends that the IJ erred as a matter of law in concluding that he failed to satisfy the continuous physical presence requirement of 8 U.S.C. § 1229b(b)(1)(A). This contention is without merit.

Estrada-Lerma conceded through counsel before the IJ that he departed the United States pursuant to an order of voluntary departure on November 8, 2000. Accordingly, the IJ properly concluded that Estrada-Lerma failed to demonstrate the requisite ten years of continuous physical presence for cancellation of removal. *See Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 972 (9th Cir. 2003) (per curiam) (holding that a departure pursuant to an order of voluntary departure constitutes a break in continuous physical presence).

Although Estrada-Lerma acknowledges the holding in *Vasquez-Lopez*, he contends that *Vasquez-Lopez* was incorrectly decided. To the extent Estrada-Lerma urges us to revisit that holding, we cannot do so because a three-judge panel lacks authority to overrule Ninth Circuit precedent. *See United States v. Lucas*, 963 F.2d 243, 247 (9th Cir. 1992). Moreover, a petition for rehearing en banc in *Vasquez-Lopez* previously failed to receive a majority of the votes of the

nonrecused active judges. *See Vasquez-Lopez*, 343 F.3d 961 (9th Cir. 2003) (order). Thus, *Vazquez-Lopez* is the law of this circuit.

PETITION FOR REVIEW DENIED.